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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/685,134

10/14/2003

James F. Zucherman

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EXAMINER

HOFFMAN, MARY C

ART UNIT

PAPER NUMBER

3733

MAIL DATE

DELIVERY MODE

06/01/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/685,134	Applicant(s) ZUCHERMAN ET AL.	
	Examiner Mary Hoffman	Art Unit 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 33-50 is/are pending in the application.
- 4a) Of the above claim(s) 5,6 and 33-46 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 7-12 and 47-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

Claims 2, 3, 8, 9, 10, 11 and 12 are objected to because of the following informalities:

In claim 2, Applicant recites "the handle" when there appears to be no antecedent basis for the term "the handle". Accordingly, this term should be changed to recite "a handle" to be clearer for examination purposes.

In claims 3, 8, 9, 10, 11 and 12, Applicant is advised that claims 3, 8, 9, 10, 11, and 12 are currently inconsistent with the recent amendment clarifying independent claim 1 (i.e. first, second, third, and fourth blades are now recited rather than first and second blades). For example, applicant recites "second cutting blades" in claim 3, line 1, and this should be changed to --third and fourth cutting blades--. Also in claim 1, Applicant recites "first cutting blades" in claim 3, line 1, and this should be changed to --first and second cutting blades-- in order to be consistent with claim 1. Similar changes must be made in claims 8 –12.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 4, 7-9, 11-12 and 47-50 are rejected under 35 U.S.C. 102(b) as being anticipated by Wall (U.S. Patent No. 482,704).

Wall discloses a tool comprising a cutter (FIG. 8) having a forked end having a first tine (ref. #'s 1 and 2) and a second tine (ref. #'s 4 and 5), wherein said first and said second tines both having an upper surface and a lower surface, and both having an inner side and an outer side, wherein the inner side extends between the upper surface and the lower surface, and the outer side extends between the upper surface and the lower surface, a first cutting blade (ref. #2) extending from the upper surface of said first tine and flush with the inner side of said first tine; a second cutting blade (ref. #4) extending from the upper surface of said second tine and flush with the inner side of said second tine and extending in a first direction from said first and said second tines; wherein the first cutting blade is adapted to cut a groove in a first vertebral body in the first direction, and a third cutting blade (ref. #1) extending from the lower surface of said first tine and flush with the outer side of said first tine and a fourth cutting blade (ref. #5) extending from the lower surface of said second tine and flush with the outer side of said second tine and extending in a second direction from said first and said second tines; wherein the fourth cutting blade is adapted to cut a groove in a second vertebral body in the second direction; wherein the second direction being opposite from the first direction. The tool is handheld by a handle (ref. #A); wherein the first and the second cutting blades are parallel to each other and over the entire length of the blade cutting surface, the first and second cutting blades are parallel to the handle of the tool, such

that with the handle moving in a horizontal plane the first and second cutting blades will cut parallel grooves in the horizontal plane. The third and fourth cutting blades are placed further apart than the first and second cutting blades. The two tines have beveled leading edges. The first and second cutting blades are coplanar with the inner side of each tine. The first and second cutting blades are coplanar with the outer side of each tine. The blades are positioned and adapted to bypass nerves. The first and second cutting blades are upper cutting blades and the third and fourth cutting blades are lower cutting blades.

Claims 1-4, 7-12 and 47-50 are rejected under 35 U.S.C. 102(b) as being anticipated by Marshaus (U.S. Patent No. 2,397,875).

Marshaus discloses a tool comprising a cutter (FIG. 1) having a forked end having a first tine (ref. #19) and a second tine (ref. #8), wherein said first and said second tines both having an upper surface and a lower surface, and both having an inner side and an outer side, wherein the inner side extends between the upper surface and the lower surface, and the outer side extends between the upper surface and the lower surface, a first cutting blade (ref. #9) extending from the upper surface of said first tine and flush with the inner side of said first tine; a second cutting blade (ref. #10) extending from the upper surface of said second tine and flush with the inner side of said second tine and extending in a first direction from said first and said second tines; wherein the first cutting blade is adapted to cut a groove in a first vertebral body in the first direction, and a third cutting blade (ref. #9) extending from the lower surface of said first tine and flush with the outer side of said first tine and a fourth cutting blade (ref.

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#10) extending from the lower surface of said second tine and flush with the outer side of said second tine and extending in a second direction from said first and said second tines; wherein the fourth cutting blade is adapted to cut a groove in a second vertebral body in the second direction; wherein the second direction being opposite from the first direction. The tool is handheld by a handle (ref. #18); wherein the first and the second cutting blades are parallel to each other and over the entire length of the blade cutting surface, the first and second cutting blades are parallel to the handle of the tool, such that with the handle moving in a horizontal plane the first and second cutting blades will cut parallel grooves in the horizontal plane. The two tines have beveled leading edges. The first and second cutting blades are coplanar with the inner side of each tine. The first and second cutting blades are coplanar with the outer side of each tine. The blades are positioned and adapted to bypass nerves. The first and second cutting blades are upper cutting blades and the third and fourth cutting blades are lower cutting blades. The tines have inboard and outboard beveled surfaces that converge and the first cutting blades have surfaces that are continuous with the inboard beveled surfaces and the second cutting blades have surfaces that are continuous with the outboard beveled surfaces.

Response to Arguments

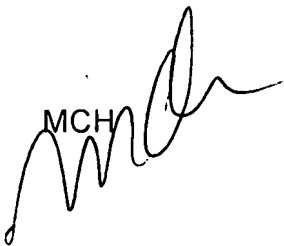
Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mary Hoffman whose telephone number is 571-272-5566. The examiner can normally be reached on Monday-Friday 9:00-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo C. Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MCH



EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER